THE HONOURABLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.24151 OF 2006

DATED: 22.10.2007

Between:

M/s. Builders Engineers & Engineering Services, 50-121-58, Balaji Hills, Seethammadhara, Visakhapatnam, rep. by its Sole Proprietor Sri G.Vasudeva Rao

.. Petitioner

And

Garrison Engineer (I), Dockyard Maintenance, Naval Dockyard, Visakhapatnam and another.

.. Respondents

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION No.24151 OF 2006

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ORDER:

This Court ordered notice before admission on 10.09.2007.

2. Counter-affidavit is filed by the 1st respondent.

3. Heard the counsel on record.

4. The writ petition is filed for a Writ of Mandamus declaring the order of the 2nd respondent in DG/2068-C/BEES/36/E8, dated 07.08.2006, and the consequential order of the 1st respondent in YSGE/8001/102/E8, dated 22.09.2006, declaring that the petitioner is no longer enlisted contractor with respondents as illegal, arbitrary, infringement of the fundamental rights of the petitioner and also in violation of principles of natural justice; and consequently direct the 1st respondent to issue work order to the petitioner in respect of the accepted and concluded contract dated 24.07.2006 for the work "repairs/resurfacing to bituminous roads from weigh bridge to site 44 and dumping yard at Naval Dockyard, Visakhapatnam" and also direct the 2nd respondent to supply application format and necessary documents etc. required for renewal of enlistment of the petitioner in pursuance of the application, dated 16.09.2006, made by the petitioner.

5. In the affidavit filed in support of the writ petition, which is sworn

by the Proprietor of the petitioner concern, it is stated that the petitioner has been doing contracts under the name and style of Builders Engineers & Engineering Services in and around Visakhapatnam and it was also enlisted as “C” category contractor with Director General of Naval Projects, Visakhapatnam with a tendering limit of Rs.15.00 lakhs, vide enlistment proceedings No.DG/0250/BEES/14/58, dated 19.7.1989. It is also stated that it had also, at the time of enlistment, submitted Standard Security Deposit of Rs.18,500/- by way of STDR (Short Term Deposit Receipt) No.TJ 202963, dated 06.07.1989, issued by State Bank of India, Visakhapatnam, endorsed in favour of C.D.A., Madras. It is further stated that subsequently, on enhancement of Standard Security Deposit (S.S.D.) to Rs.31,000/-, the petitioner tendered additional SSD of Rs.12,500/- by way of four NSCs Rs.10,000/-, Rs.1,000/- and Rs.500/- respectively and, thus, it is having a total SSD of Rs.31,000/- with Director General of Naval Projects (DGNP), Visakhapatnam. It is also further stated that being enlisted contractor with DGNP as stated above, the petitioner is entitled to tender and execute works that may be notified by any of the officers of DGNP, Visakhapatnam such as Garrison Engineer Independent Dockyard Maintenance, Visakhapatnam, Garrison Engineer (Navy) Visakhapatnam, Garrison Engineer Independent Projects {GE(I)(P)}, Visakhapatnam, Garrison Engineer Naval Services, Visakhapatnam, Garrison Engineer Naval Base, Visakhapatnam, Garrison Engineer Naval Dockyard, Visakhapatnam etc. It is also further stated that in course of its executing works with the department, the petitioner was awarded a work “Special repairs to Buildings” as per tender agreement No.CWE/VIZ/08/93-94/GE/VSP and in connection with that work, one Mr N.S. Mawari, B/R-II, Superintendent, office of the AGE/MES/NB/VSP, demanded

Rs.15,000/- as bribe from Mr.V.B.Chakradhar, Site Engineer of the petitioner's establishment for processing and forwarding the 4th RAR bill for Rs.1,05,007-69 to the office of the Garrison Engineer (NB), Visakhapatnam and on his complaint, the said Mawari, Superintendent, was trapped by the CBI and the CBI Court, after due trial, convicted him for the said offence and sentenced him to rigorous imprisonment of two years and to pay a fine of Rs.1,000/- each for the offences under Sections 7 & 13 (i)(d)(i)(i) r/w Section 13 (2) of P.C. Act, 1988 (i.e. total fine of Rs.2,000/-) as per Judgment dated 16.04.1998 in C.C.No.1/1996 of the Special Judge for CBI cases, Visakhapatnam. Since then, the petitioner was not allowed to proceed and complete the said work. Further, it is stated that many of the aforementioned officers of the DGNP have been showing vengeance attitude and not supplying the tender schedules and have been simply rejecting the petitioner's applications without assigning any reason/ground, which ultimately resulted and deprived the petitioner of its legal right to carry on its occupation which is infringement of fundamental right guaranteed under the Constitution of India. Therefore, the petitioner had to approach this Court by way of W.P.No.15535 of 2006, wherein this Court was pleased to pass an order, dated 27.07.2006, directing the respondents therein i.e. DGNP (respondent No.1), GE(I)DM (respondent No.2), GE (ND), Visakhapatnam to issue tender schedules in respect of the works notified by them provided the petitioner made an application within the time prescribed, and in case there is any objection for issuing the tender schedules to it, the reasons shall be communicated to it within a week from the date of receipt of the said order. It is also further stated that just prior to filing of the earlier writ petition, the GE (I) (DM), Naval Dockyard, Visakhapatnam- the 1st respondent herein and the 2nd

respondent in W.P.No.15535 of 2006 had published a tender notice dated 5-6-2006 in respect of the work “Repairs/Re-surfacing to Bituminous Road from weight bridge site to 44 and dumping yard at Naval Dockyard, Visakhapatnam” and for the same, the petitioner stood as successful lowest competitive bidder and the same was declared on 24-7-2006 itself then and there in the presence of all the bidders and the petitioner was waiting for issuance of the work order. It is also stated that the said GE, having called for the petitioner’s enlistment particulars and list of works executed by the petitioner in his letters dated 26-7-2006 and 22-8-2006 and having received the said particulars vide the petitioner’s letter dated 22-8-2006, had not issued work order, which is contrary and in violation of the accepted and concluded contract dated 24-7-2006. It is further stated that on the other hand, the 1st respondent, by his letter dated 25-8-2006, informed the petitioner that as per the letter No.DG/2068-C/BEES/36/E8, dt.7-8-2006, of the 2nd respondent in reply to the show cause notice issued by the Hon’ble High Court it is clear that the petitioner’s enlistment with Director General of Naval Project is no longer valid and therefore the petitioner’s statement in paragraph 1 of its letter that it was enlisted with DGNP (V) in category ‘C’ with Index No.C-8 is not correct and misleading and that no further correspondence should be entertained. Further, it is stated that the contentions of the respondent No.2 in his letter dated 7-8-2006 that the petitioner’s enlistment under class ‘C’ expired on 31-12-1995 and though it was asked to submit requisite documents through his letter dated 16-7-1993, it failed to submit the same and, therefore, its enlistment with the Directorate is no longer valid and that on verification from the records there is no application for issue of tender from the petitioner’s end and hence the question of intimation of

rejection does not arise, not withstanding that it is not eligible since its enlistment was already elapsed, are all absolutely incorrect, baseless and not sustainable under law. It is also further stated that in fact the petitioner had not received any such letter at any point of time and that the copy of the said letter dated 16-7-1993 enclosed to the letter dated 7-8-2006 of the 2nd respondent shows that it was sent to a wrong address i.e. Door No.51-1-27 instead of Door No.51-1-21 and therefore it was returned. Further, it is stated that the format of application stated in paragraph 4 of the letter, which should have been enclosed was in fact not enclosed, and that even the letter dated 7-8-2006 was also sent again to a wrong address i.e. H.No.50-121-66 instead of 50-121-58 and therefore it was also returned un-served. It is further stated that then the above set of letters wee sent with another letter dated 14-8-2006 to the correct address and then only the petitioner came to know of them and, thus, virtually all the above irregularities appears to have been purposefully committed owing to the grudge and group boycott to deprive the petitioner from participating and dong any contracts with the department owing to the fact of the conviction of the employee of the department on proof of corruption charges as stated above. It is also further stated that but for the directions of this Court in W.P.No.15535 of 2006, all these collusive irregularities committed by the officers of the department would have been buried including the petitioner's fundamental right to do contract works with the department. Further, it is stated that the petitioner sent a detailed a letter dated 16-9-2006 to the 1st respondent marking copy to 2nd respondent apprising all the aforementioned facts and its legal contentions that it did not receive the letter dated 16-7-1993 and its enlistment was in fact not cancelled or revoked and its SSD of Rs.31,000/- was not returned and it was not required to apply for

renewal of enlistment and that, therefore, it is legally deemed to be valid and continuing 'C' class contractor having sufficient SSD with the department and, therefore, rejecting its application for tenders as well as to issue work order by 1st respondent in respect of the lawfully accepted lowest tender and concluded contract dated 24-7-2006 for the work of "Repairs/Re-surfacing to Bituminous road from weigh bridge to site 44 and dumping yard at Naval Dockyard, Visakhapatnam" amounts to depriving/infringement of its fundamental rights and also violation of principles of natural justice and, therefore, requesting to issue work order in respect of said work immediately, and that a copy of the said letter was marked to the 2nd respondent also with a specific request to reimburse monitory loss caused to it on account of not affording opportunity to it to renew its matured STDR and NSCs from time to time all along. It is also further stated that the petitioner also requested the 2nd respondent to supply necessary format of applications and documents etc. required for applying for renewal of its enlistment expressing its ready and willingness to pay even any additional/differential SSD, if required, as per existing rules, but in vain. Further, it is stated that the 1st respondent, in response to the said letter, by his letter dated 22.9.2006, had informed the petitioner that his office is separate from DGNP (V), Visakhapatnam and that issuance of tenders would be considered only for enlisted contractors as per existing procedures and it was brought to its notice by the 2nd respondent vide letter dated 7-8-2006 that the petitioner was no longer enlisted with them, and since the petitioner had enlistment with DGNP (V), the case may be resolved with DGNP (V) alone and in case the petitioner is re-enlisted with DGNP (V), his office would consider issue of tenders to it. It is also stated that the said letter itself

is self contradictory, because at one breath the 1st respondent says that his office is separate from DGNP (V) and on the other hand, he says that as per Director General of Naval Project's letter, the petitioner is no longer an enlisted contractor with them and that if it is re-enlisted with the DGNP (V), his office would consider issue of tenders to it. It is further stated that the said letter, apart from the above malicious and illegal vengeance contentions, did not speak of the issue of work order to the petitioner in respect of the validly and legally accepted tender and concluded contract dated 24-7-2006 in respect of the aforementioned work and therefore the said letter, dated 22-9-2006, of the 1st respondent is arbitrary, capricious, malicious and motivated to deprive the petitioner of its fundamental rights and also violative of the principles of natural justice and, therefore, totally illegal and not sustainable under law. It is also further stated that the act of the 2nd respondent in intentionally not communicating his letters as stated above to the correct address of the petitioner is to deprive the petitioner of its fundamental rights and motivated to spoil its occupational carrier besides violative of principles of natural justice and, as such, arbitrary, capricious and not sustained under law. Further, it is averred at paragraph 11 of the affidavit that the respondents 1 and 2 are public authorities and wantonly refused to perform their public duty and that when an action of a public authority affects a person, such public authority must give to such person an opportunity of hearing and that such opportunity must be real, effective and substantial. It is also further stated that it should not be mere pretence or show of compliance and that when a notice is given to a person proposing to take action against him, the material sought to be used against such person must be made available to him and sufficient opportunity must be provided to him to explain his position or

to comply the same. The petitioner, in support of its contention, relied upon the decision of this Court in Gode Jogireddy v. Commissioner, Survey, Settlement and Law Records, Andhra Pradesh, Hyderabad and others[1]. It is also stated that the 2nd respondent had sent the letter dated 16.07.1993 to wrong address and the subsequent letter, dated 07.08.2006, also to a wrong address and the copies of the same were again sent with his letter 14.08.2006, but without the format of application and other documents necessary to renew the enlistment of the petitioner. It is further stated that the 2nd respondent had not supplied the said material though specifically requested by the petitioner in the letter dated 16.09.2006 and that all these acts of the respondents are nothing but intentionally depriving the petitioner of the opportunity to renew its enlistment and thereby infringed its fundamental right and also violated the principles of natural justice. Under such circumstances, the petitioner approached this Court praying for the relief specified supra.

6. In the counter-affidavit filed by the 1st respondent, it is stated that the petitioner claimed that it was enlisted with DGNP (V) as 'c' category contractor, based on which this office has issued tender documents for the work "Repairs/re-surfacing to bituminous road from weigh bridge to site 44 and dumping yard at ND (V)", and that later on it was noticed that the firm had failed to get re-enlisted with respondent No.2 and hence the firm was treated as un-enlisted. It is also stated that this office cannot consider the issuance of tenders to un-enlisted contractor and that the performance of the petitioner is poor which can be established through cases filed and pending in the Court at Visakhapatnam. Further, it is stated that the petitioner did not complete the following works awarded and, therefore, got done at his risk and

cost.

(a) CA No.CE(Navy)/VIZ/02 of 93-94: Provision of compound wall around unit land of coast guard at Visakhapatnam.

(b) CA No.CWE/VIZ/08 of 93-94: Special repairs of bdlg.Nos. P/13, P/14A, P/14B, P20 and T/60 of C-in-C Officers mess at Naval Base, Visakhapatnam.

(c) CA No.CWE (S) 02 of 98-99: Provision of HT OH lines across flood channel and along with MTC of ND (V).

It is further stated that, as stated earlier, basing on its poor performance, the Chief Engineer (Southern Command), Pune had directed that the petitioner not be given any tenders. Further, it is stated that this office does not fall under the administrative control of DGNP (V) and hence the petitioner's claim is totally false and denied.

It is also further stated that W.P.No.15535 of 2006 was dismissed as infructuous by order dated 03.07.2007. Further, it is stated that the petitioner claimed in the application for issue of tender schedules that he was enlisted with DGNP (V) vide index No.C-8 and with good faith and belief, this office had acted upon and issued the tender schedules for "Repairs/re-surfacing to bituminous road from weigh bridge to site 44 and dumping yard at ND (V)" and the petitioner was found to be the lowest bidder on the date of opening of tender by the Board of officers.

It is also stated that all the tenderers who have submitted their offer shall remain open for acceptance for a period of 60 days from the date of opening as per the Appendix 'A' to the tender forwarding letter and hence the petitioner's claim that the tender was accepted on 24-7-2006 itself then and there in the presence of all the tenderers is a false statement made with malafide intention. It is further stated that the malafide intentions of the petitioner were very clear from the date of

application for issue of tender schedule and that the petitioner's enlistment was no longer valid with respondent No.2. Further, in reply to paragraph 8 of the affidavit filed in support of the writ petition, it is stated that the respondent No.1 made it clear in their counter-affidavit in W.P.No.15535 of 2006 that the petitioner firm now stands un-enlisted and, hence, the petitioner's claim that it was enlisted as 'C' class contractor is totally baseless. It is also stated that the tender was cancelled on administrative grounds. Further, in reply to paragraph 9, it is stated at paragraph 11 of the counter-affidavit that, in Visakhapatnam, three agencies are involved for enlistment of contractors viz. (i) Director General Naval Projects, Visakhapatnam, (ii) Chief Engineer (Navy), Visakhapatnam and (iii) Commander Works Engineer, Visakhapatnam and that the tenders would generally be issued to all the enlisted contractors with any of the above organizations. Further, it is stated that this office falls under the administrative control of Admiral Superintendent, Naval Dockyard, who was not vested with the powers for enlistment of contractors by the Government of India and, hence, the petitioner was informed the facts that the case may be resolved with respondent No.2. As such, no malicious and illegal vengeance contentions exist to this office. It is also further submitted that the petitioner submitted its tender, but is not accepted and concluded contract as emphasized by the petitioner. Further, it is stated that the fact that the Accepting Officer, on behalf of the President of India, does not bind himself to accept the lowest or any tender was also brought to the notice of the petitioner in the authorization letter, which was sent along with the tender schedules. It is also stated that since the subject tender was not accepted to any of the competitive bidders, the fundamental rights of the petitioner are not deprived of any violation of the principles of natural justice had been

done. Certain further averments were made in paragraphs 12, 13, 14, 15 and 16 of the counter-affidavit as well.

7. In the light of the respective stands taken by the parties, especially, the specific stand taken in paragraphs 8, 10 and 11 of the counter-affidavit filed by the 1st respondent, this Court is of the considered opinion that the petitioner is not entitled to any of the reliefs prayed for in the writ petition.

8. Accordingly, the writ petition is dismissed. No order as to costs. However, the petitioner is given liberty to approach the 2nd respondent for enlistment in accordance with law.

(**P.S.NARAYANA,J)**

22nd October, 2007.
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[1] 2006 (5) ALD 126